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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,922	12/19/2001	Naoto Yasaka	1155-0236P	8872
2292	7590	03/30/2004		
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/020,922

Applicant(s)

YASAKA ET AL.

Examiner

Walter B Aughenbaugh

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See continuation sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: 2 and 9.

Claim(s) rejected: 1,3-8 and 10-20.

Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### **ADVISORY ACTION**

#### ***Acknowledgement of Applicant's Amendments***

1. The After Final Amendment filed February 27, 2004 has not been entered due to the fact that the amendment raises new issues that would require further consideration and/or search. The recitation "(B) is contained in an amount of 10% to less than 50% by weight" in claims 1, 4, 8, 12 and 17 necessitates a rejection of claims 1, 4, 8, 12 and 17 under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, thus raising at least one new issue. The range Applicant intends to recite by the recitation "an amount of 10% to less than 50% by weight" cannot be ascertained; therefore, the scope of the claim cannot be ascertained. The ranges 10 to 49, 10 to 48, 10 to 9, 10 to 1, 10 to zero, and an infinite amount of other ranges that begin with "10 to" read on the recitation "an amount of 10% to less than 50% by weight". What single range does Applicant intend to claim?

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

2. Applicant's arguments in regard to the objections to the specification presented on page 20 of the After Final Amdt. rely entirely on the after final amendments in the specification which have not been entered.

3. Applicant's arguments on pages 20-21 of the After Final Amdt. regarding the objection to claims 2 and 9 have been fully considered but are not persuasive. Applicant argues that claim 2 effectively recites "a combination of components (B) + (C)" and provides further limitations for component (B); Examiner agrees, but claim 2 nonetheless fails to further limit claim 1 for the embodiment of claim 1 that comprises components (A) and (C) but not component (B), i.e. 0%

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of (B). Examiner thus maintains the objection to claim 2. Applicant's argument in regard to the objection to claim 9 relies entirely on Applicant's argument in regard to the objection to claim 2, which has been addressed above in this Advisory Action.

4. Examiner acknowledges Applicant's statement that " 'three-way sealing' is disclosed, and not a three-layered cup" made on lines 9-10 of the After Final Amdt., but Examiner previously pointed out this fact in paragraph 11 of the Final Rejection wherein it is stated:

Note that the phrase "a three-way sealing of the sealant laminate" at lines 12-13 of page 20 of the specification that is cited by Applicant describes nothing about the structure of the laminate; e.g. this phrase does not read on a three-layer laminate. Applicant has not addressed the issues of "the specification lacks a clear description as to how the cover is joined to the cup to form a hermetic seal" and the "inconsistency" in the description of the structure of the cup as discussed in paragraph 5 of Paper 11.

Applicant argues that a three layer cup and a single layer cup are "different embodiments discussed in the present specification, and thus there is no inconsistency between the present specification and the claims", but as the content of the paragraph bridging pages 3 and 4 of the Non-Final Rejection suggests, it is not clear that a three layer cup and a single layer cup are disclosed as "different embodiments" of Applicant's invention.

5. In an attempt to overcome the 35 U.S.C. 112, second paragraph rejection, Applicant provides a new "Figure 1" that does not overcome the rejection because the claim language to which Applicant basically refers as describing "the structural details of Figure 1 in light of the interpretation of the disputed claims" has not been sufficiently amended; the claim language defines the invention, not a drawing or drawings, especially when the structure recited by the claim language doesn't correspond in scope with the structure shown in the drawing or drawings.

6. Applicant's arguments on pages 24-26 of the After Final Amdt. in regard to the art rejections have been fully considered but are not persuasive. Applicant's arguments presented in

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the sole complete paragraph of page 25 through page 26 of the After Final Amdt. rely entirely on the after final amendments which have not been entered.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

03/10/04

WBA

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

3/10/04